

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**INTEGRITY STONE**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:43 V unpaid employee expenses

**Employer:** Integrity Stone, 759 Portsmouth Ave, Greenland, NH 03840

**Date of Hearing:** August 26, 2015

**Case No.** 50775

**BACKGROUND AND STATEMENT OF THE ISSUES**

A Wage Claim was filed with the Department of Labor on June 23, 2015. The notice was sent to the employer and there was an objection. The objection was sent to the claimant and there was a request for a hearing. The Notice of Hearing was sent to both parties on July 30, 2015.

The claimant testified that he helped the owner start the company in 2009. He said that he was working 40-60 hours per week and only paid \$100.00. He said he worked "on and off" for several years and he never received his paychecks for the last two weeks he worked. He did submit copies of those last two time cards.

The claimant submitted the Wage Claim for the amount of \$8,590.25. The claimant stated that he was due 715 hours over the years and that he had also suffered an expense because of the employer. He testified that he had to buy some marking pens to do his job for the employer. In his testimony the claimant said that he had proof of \$1,818.25 due in wages and there was no proof of another \$6,720.00 in unpaid wages.

The claimant testified that he did fill out time cards and was paid at a rate of \$12.00 per hour. He also said that there was a written agreement in place and that he worked "on and off" for the employer. He started his employment in 2009.

The employer testified that he and the claimant were best of friends and often did many things together. The claimant worked when he could because he was also in business for himself. The claimant did fill out time cards and he was paid at a rate of \$13.00 per hour. The

claimant was paid for all wages and time worked. The employer testified that at the end of the relationship the claimant would “hang out” with the owner and often brought his dog to the worksite to just sit around and talk. The records for the last two pay periods were not submitted until a year after they were allegedly worked. The employer testified that they were not accurate as the claimant did not perform any work in the cited time frames.

The employer testified that the last two time cards were never turned in and he did not know about the cards until a year later when the claimant filed the Wage Claim. He said that some of the days were filled in by a time clock and some were just written in instead of using the clock.

The employer also testified that all supplies were bought in bulk and that the employees did not have any access to the accounts for supplies. All supplies necessary to do the job were provided by the employer to the employees.

The employer testified that there were no expenses presented to him and that the receipt presented with the Wage Claim was for pens that were supplied by the company. All wages were paid up to the final two time cards which were not presented for over a year. The employer testified that there is no written agreement with the claimant and that the hourly paid rate was \$13.00 not the \$12.00 cited by the claimant. The employer also objects to the lack of any evidence to show that there are unpaid wages and expenses. He testified that he feels the claimant is just making up figures because the claimant needs money.

### **FINDINGS OF FACT**

RSA 275:43 I Every employer shall pay all wages due to employees within 8 days including Sunday after expiration of the week in which the work is performed, except when permitted to pay wages less frequently as authorized by the commissioner pursuant to paragraph II, on regular paydays designated in advance by the employer and at no cost to the employee:

- (a) In lawful money of the United States;
- (b) By electronic fund transfer;
- (c) By direct deposit with written authorization of the employee to banks of the employee's choice;
- (d) By a payroll card provided that the employer shall provide to the employee at least one free means to withdraw up to and including the full amount of the employee balance in the employee's payroll card or payroll card account during each pay period at a financial institution or other location convenient to the place of employment. None of the employer's costs associated with a payroll card or payroll card account shall be passed on to the employee; or
- (e) With checks on a financial institution convenient to the place of employment where suitable arrangements are made for the cashing of such checks by employees for the full amount of the wages due; provided, however, that if an employer elects to pay employees as specified in subparagraphs (b), (c), or (d), the employer shall offer employees the option of being paid as specified in subparagraph (e), and further provided that all wages in the nature of health and welfare fund or pension fund contributions required pursuant to a health and welfare fund trust agreement, pension fund trust agreement, collective bargaining agreement, or other agreement adopted for the benefit of employees and agreed to by the employer shall be paid by every such employer within 30 days of the date of demand for such payment, the payment to be

made to the administrator or other designated official of the applicable health and welfare or pension trust fund.

This is the section of the law that mandates an employer to pay an employee all wages due at the time the wages are due and owing.

RSA 275:43 V Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

This part of the law places an issue such as expenses to the employee being considered wages when the expenses are due and owing.

It is the finding of the Hearing Officer, based on the written submissions and the testimony of the parties, that the Wage Claim is invalid. The claimant has the burden to show that there are wages due and owing and he did not meet this burden.

There is no finding for any expenses suffered by the claimant. The employer provided credible testimony that the company bought all supplies in bulk and that the employees had no access to the ordering process and they were given supplies as needed.

The claimant requested wages from the start of the business in 2009. Some of that time is outside of the three year limit to file a Wage Claim and the claimant did not provide any evidence that he was not paid all wages due. It became apparent that there was a personal relationship between the owner and the claimant. They were best of friends and the claimant did work "on and off" for the employer.

The claimant filed the Wage Claim for the amount of \$8,590.25. This amount included a receipt for personal expenses in the amount of \$9.45. If the rest were wages, the claimant did not specify when the time was worked and how and when he was paid. The claimant did submit two time cards from over a year ago for 58 hours one week and 53.25 for the second week. These time cards show some stamped time and some written in time.

The employer was credible in his testimony that the claimant had his own business and only worked for the employer at times when he needed work. The two weeks cited on the time cards were for two weeks that the employer and the claimant were just hanging around as friends. The employer was credible in his testimony that the claimant was not on the payroll those two weeks and the first time he saw the time cards was when the Wage Claim was filed.

The claimant had the cards for a year and did not request any wages prior to the Wage Claim. There was also some difference in the hourly rate the two parties cited in testimony. The claimant said that he was paid at an hourly rate of \$12.00 and the employer testified that when the claimant did work, he was paid at \$13.00 per hour.

It is found that there was no evidence that actually showed time worked and not paid, and there was no evidence that expenses were due and owing. The Wage Claim amount of \$8,590.25 was never proven.

The claimant presented two time cards both with stamped time and hand written entries to show hours worked. The employer provided credible testimony that the two parties were friends and the claimant was not an employee during the period of time on the two time cards. The Hearing Officer does not find the claimant's documentation credible in light of the employer's credible and persuasive testimony of the working relationship.

The Wage Claim is invalid.

**DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds the claimant failed to prove by a preponderance of the evidence that he was not paid all wages due, it is hereby ruled that the Wage Claim is invalid.

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Thomas F. Hardiman  
Hearing Officer

Date of Decision: September 23, 2015

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